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Client/Matter/Tkpr: 58049-0017 Date: January 13, 2003 Time Sent: \_\_\_\_\_

Number of pages including this page: 4

OFFICIAL

**TO:**

Name: Assistant Commissioner for Patents Facsimile No. 703-872-9306

Group Art Unit: 1651

Company: c/o Exr. Deborah WARE Contact No. \_\_\_\_\_

Attached for filing in Application Serial No. 09/973,185 is:

1) **Response to Restriction Requirement**

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this document (including any paper referred to as being attached or enclosed) is being sent to the U.S. Patent and Trademark Office via facsimile transmission to (703) 872-9306 on the date indicated below, with a coversheet addressed to Assistant Commissioner for Patents, U.S. Patent and Trademark Office, Washington, D.C., 20231.

Date: January 13, 2003

By: Kelli N. Watson  
Kelli N. Watson, Registration No. 47,170

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Date: January 13, 2003By: Kelli N. Watson  
Kelli N. Watson, Registration No. 47,170

Docket No.: 058049-0017

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of

WEISSMAN, Glenn H.

Serial No.: 09/973,185

Group Art Unit: 1651

Filed: October 10, 2001

Examiner: Ware, Deborah K.

For: COMPOSTION AND METHOD FOR TREATING SNORING

**RESPONSE RESTRICTION REQUIREMENT**Assistant Commissioner for Patents  
Washington, DC 20231

Dear Sir:

In response to the non-final Office Action dated December 12, 2002, setting forth a restriction requirement, Applicant hereby elects, with traverse, **Group I (claims 1-16)** for prosecution on the merits.

Applicant respectfully submits that a restriction requirement between patentably distinct inventions is proper only when there is a serious burden on the Patent Office to examine all of the claims in a single application even when it appears that appropriate reasons exist for a restriction requirement. M.P.E.P. § 803. To avoid unnecessary delay and expense to Applicant and duplicative examination by the Patent Office, Applicant respectfully requests that the above policy be applied in the present application because the subject matter of the pending claims is sufficiently related.

For instance, Group I is directed to compositions comprising an anti-snoring effective amount of a solution comprising a homopolysaccharide at a concentration of from about 0.01 to

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Attorney Docket No. 058049-0017

about 2.5 weight percent, based on the total weight of the solution. Group III is directed to an anti-snoring composition comprising the homopolysaccharide oat beta glucan, water, potassium sorbate, glycerin, ascorbic acid, retinyl palmitate, tocopherol acetate, linoleic acid, etc.

Applicant respectfully submits that the non-burdensome search for Group I would necessarily overlap with Group III because both groups are directed to anti-snoring compositions comprising a homopolysaccharide. Moreover, the oat beta glucan (Group III) is a homopolysaccharide (Group I). Further, a search for anti-snoring compositions comprising a homopolysaccharide would necessarily overlap with a search directed to anti-snoring compositions comprising a homopolysaccharide of a particular concentration.

Similarly, Group II is directed to methods of treating snoring comprising administering a composition comprising about 0.1 to 50 weight percent of a homopolysaccharide. Group IV is directed to a method of treating snoring in an individual comprising administering an effective amount of a composition comprising the homopolysaccharide oat beta glucan, an aqueous buffered solution comprising water, potassium sorbate, glycerin, ascorbic acid, retinyl palmitate, tocopherol acetate, linoleic acid, etc. Applicant respectfully submits that the non-burdensome search for the inventions of Group II, would necessarily overlap with the inventions of Group IV because oat beta glucan (Group IV) is a homopolysaccharide (Group II). Further, a search for methods of treating snoring comprising administering a composition comprising a homopolysaccharide would necessarily overlap with a search directed to methods of treating snoring comprising administering a composition comprising a homopolysaccharide of a particular concentration.

Lastly, Applicant respectfully submits that the search for the inventions of Group I, would necessarily overlap with the inventions of Group II. Applicants submit that the methods of Group II comprise administering the compositions of Group I.

Thus, a thorough search for the subject matter of any one claim of elected Group I would necessarily overlap with a search for the subject matter of each of the remaining claims in Groups II, III and IV such that a search and examination of the entire application can be made without serious burden. As such, Applicant respectfully requests reconsideration and withdrawal of the restriction and election of species requirements.

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Please grant any extension of time necessary for entry of this communication.  
Please charge any deficient fees, or credit any overpayment of fees, to Deposit Account No.  
500417. A duplicate copy of this communication is attached.

Respectfully submitted,

Date: January 13, 2003

By: Kelli N. Watson  
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